

BARBARA A. JOECKEL

IBLA 77-119

Decided June 10, 1977

Appeal by applicant from notice of rental due received from Montana State Office, Bureau of Land Management, in connection with her noncompetitive oil and gas lease offer, M 36065 (ND).

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals -- Regulations: Applicability

The filing of a noncompetitive oil and gas lease offer, prior to acceptance, does not create any right to a lease or legal interest which restricts the discretionary authority of the Secretary of the Interior over lease issuance. Thus, an amended regulation raising the lease rental charge may be applied to lease offers which have been previously filed but not accepted and such action is not violative of the Fifth Amendment.

APPEARANCES: Barbara A. Joeckel, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Barbara A. Joeckel brings this appeal from a notice of rental due in connection with her noncompetitive oil and gas lease offer, M 36065 (ND), which she received from the Montana State Office, Bureau of Land Management (BLM). The notice informed appellant that the first year's lease rental in the amount of \$640 (at the rate of \$1 per acre) must be paid to the BLM within 15 days in order to avoid being disqualified for receipt of a lease.

Appellant's lease offer received first priority in a drawing of simultaneously filed noncompetitive oil and gas lease offers for

parcel number 335 on the December 1976 list of tracts available for simultaneous filing. A revised regulation amending the annual lease rental rate from \$.50 per acre to \$1 per acre for "leases issued on and after February 1, 1977," was published in the Federal Register on January 5, 1977. 43 CFR 3103.3-2(a), 42 FR 1033 (January 5, 1977). Subsequently, the rent notice which is the subject of this appeal was sent to the appellant on January 17, 1977.

Appellant asserts in her statement of reasons for appeal that the revised rental rate of \$1 per acre should only apply to oil and gas lease applications filed after February 1, 1977. Appellant asserts that her offer was made prior to that date on the basis of the previous rental rate of \$.50 per acre. Accordingly, appellant contends she should be charged at the former rental rate.

The issue raised by this appeal is whether the filing of a noncompetitive oil and gas lease offer gives the offeror a right to a lease at the rental rate set by the regulations at the time the offer is filed where the regulation is revised to amend the rental charge after the offer is filed but prior to lease issuance.

Section 32 of the Mineral Leasing Act, 30 U.S.C. § 189 (1970), authorizes the Secretary of the Interior to prescribe necessary and proper rules and regulations and to do all things necessary to effectuate the purposes of the Act. The regulation governing the annual rental charge for noncompetitive oil and gas leases has been revised pursuant to this authority.

[1] The filing of an application for a noncompetitive oil and gas lease which has not been accepted 1/ does not create any right to a lease or generate any legal interest which reduces or restricts the discretionary authority of the Secretary of the Interior over lease issuance. 2/ Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969). Filing a noncompetitive oil and gas lease offer does not create a vested right protected by the Fifth Amendment to the Constitution from application of a subsequently amended administrative regulation. Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971); Raymond N. Joeckel, 29 IBLA 170, 173 (1977).

1/ Acceptance is indicated by the signature of the authorized officer of the BLM. 43 CFR 3111.1-1(c); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

2/ If, however, a noncompetitive oil and gas lease is to be issued, it must be issued to the first qualified applicant for a lease on the land. 30 U.S.C. § 226(c) (1970); Udall v. Tallman, 380 U.S. 1, 4 (1964).

This issue has been discussed in our decisions in Raymond N. Joeckel, supra, and Milton J. Lebsack, 29 IBLA 316 (1977). These decisions thoroughly review the law on the subject and hold that a lease granted after February 1, 1977, must be at the new rental rate provided in amended 43 CFR 3103.3-2. As quoted in Lebsack, the Secretary of the Interior in considering the matter of the application of the revised rental rate to lease applications pending prior to the change in regulation stated:

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977 have been treated unfairly under the Amended Regulations, it is important to note there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued. [3/]

Accordingly, for the reasons cited in Raymond N. Joeckel, supra, and Milton J. Lebsack, supra, the application of the amended regulation to appellant's lease offer must be affirmed. An applicant not desiring a lease under these conditions may disqualify himself by failing to pay the required rent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

3/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

